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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	No. 4:15-cr-6049-EFS-16
Plaintiff,)	
)	DEFENDANT EDGAR OMAR
vs.)	HERRERA FARIAS' REPLY TO
)	RESPONSE TO MOTION TO
EDGAR OMAR HERRERA FARIAS,)	SUPPRESS
)	
Defendant.)	Hearing: March 6, 2018 @ 9:30
)	a.m. at Richland
)	WITH ORAL ARGUMENT

The Defendant, Edgar Omar Herrera Farias, replies to the Government's Response to Defendant's Motion to Suppress, ECF NO. 647.

The Government states "it does not intend to enter into evidence the cellular telephones seized from the Defendant's bedroom or the backpacks seized from the residence." *Id.*, at 13. However, the Government "does intend to introduce photographs of the residence taken during this search of the residence, to likely include a photograph of the backpacks and cellular phones and question the officers present about the items they observed." *Id.*, at 14 (Emphasis in the original).

DEFENDANT'S REPLY TO RESPONSE TO MOTION TO
SUPPRESS -1

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1 To date, the undersigned has not received any photographs in discovery from
2 the Government that pertains to the search and seizure in question. It is impossible to
3 take a position on what has not yet been seen.
4

5 The Government admits the cellular phone and backpacks were not things
6 described as things to be seized in the search warrant. Therefore, seizure of these items
7 should be suppressed. *Marron v. United States*, 275 U.S. 192, 196 (1927).
8

9 Displaying photographs of these items to the jury would only exploit the illegal
10 seizure and should not be permitted.
11

12 The officers should have sought a second search warrant to seize the cellular
13 phone and backpacks. The home could have been sealed off and the determination of
14 the probable cause made by a magistrate, notwithstanding the articles were in plain
15 sight. See *United States v. Gillman*, 684 F.2d 616, 619 (9th Cir. 1982).
16

17 Moreover, the officers should have obtained a second warrant after they
18 discovered there were multiple residents with separate bedrooms. The officers failed
19 to realize the overbreadth of the John Doe warrant before invading the reasonable
20 expectation of privacy of the several occupants. Even the “search of a guest room in
21 a single-family home, which is rented or used by a third party and, to the extent that
22 the third party acquires a reasonable expectation of privacy requires a warrant.” *United*
23 *States v. Cannon*, 264 F.3d 875, 879 (9th Cir. 2001), citing *Rakas v. Illinois*, 439 U.S.
24 128 140 (1978).
25
26

1 All the evidence seized should be suppressed.

2 RESPECTFULLY submitted this 27th day of February 2018.

3 WALDO, SCHWEDA
4 & MONTGOMERY, P.S.

5 By: /s/ Peter S. Schweda

6 PETER S. SCHWEDA

7 Attorney for Defendant Herrera Farias
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Joseph H. Harrington
Acting United States Attorney
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By: /s/ KATHLEEN SCHROEDER
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